## ORIGINAL



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## BEFORE THE ARIZONA CORPORATION COMMISSION

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## **COMMISSIONERS**

DOUG LITTLE – Chairman BOB STUMP

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SWING FIRST GOLF LLC,

Complainant,

vs.

JOHNSON UTILITIES, L.L.C.,

Respondent.

AZ CORP COMMISSION NO DOCKET CONTROL

2016 MAY 17 PM 2 35

DOCKET NO. WS-02987A-16-0017

Arizona Corporation Commission

DOCKETED

MAY 17 2016

DOCKETED IN

**PROCEDURAL ORDER** 

## BY THE COMMISSION:

On January 19, 2016, Swing First Golf ("Swing First" or "Complainant") filed with the Arizona Corporation Commission ("Commission") a Formal Complaint ("Complaint") against Johnson Utilities, L.L.C ("Johnson" or "the Company"), alleging that Johnson has unilaterally decided to discontinue providing effluent to Swing First and other effluent customers. Swing First's Complaint alleges that if Johnson discontinues its effluent service, Johnson's actions would be unlawful and not in the public interest.

On February 2, 2016, Johnson filed an answer to the Complaint disputing the allegations in the Complaint.

On February 22, 2016, Johnson filed a Motion to Dismiss Swing First Golf's Formal Complaint ("MTD").

On February 25, 2016, Swing First filed a Supplement to Formal Complaint stating that Johnson had discontinued its tariffed effluent deliveries to Swing First effective February 24, 2016.

On March 21, 2016, a Procedural Order was issued scheduling a procedural conference to be held on April 6, 2016, and directing Swing First to file a response to Johnson's Motion to Dismiss.

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On April 4, 2016, Johnson filed its Reply in Support of Motion to Dismiss.

On April 6, 2016, a procedural conference was held as scheduled. Johnson, Swing First and Staff appeared through counsel.

On April 19, 2016, Johnson filed a response to Consumer Comment filed by Karen Christian.

On April 29, 2016, Staff filed its Response to Motion to Dismiss.

Also on that date, Swing First filed its Brief Opposing Motion to Dismiss.

On May 9, 2016, Thomas K. Irvine filed a Notice of Appearance on behalf of Johnson.

Also on that date, Johnson filed a Supplemental Reply in Support of Motion to Dismiss.

On May 10, 2016, Swing First filed First Supplemental Filing, stating that Johnson has threatened to discontinue all water service to Swing First on May 20, 2016, if Swing First fails to pay for groundwater delivered to the golf course between February 26 and April 25, 2016. Swing First's filing states that because Johnson has unilaterally discontinued deliveries of effluent to the golf course, and is now only delivering groundwater, the golf course's cost for water has quintupled. Swing First contends that with temperatures hitting 100 degrees the golf course will not be able to operate without water. Swing First requests that the Commission direct Johnson to: resume effluent deliveries; require Johnson to rebill unlawful groundwater deliveries at the effluent rate; and find that Johnson may only apply to discontinue a tariffed service as part of a rate case where the Commission can evaluate the requested rate's impacts, customer effects, and community consequences, as part of its determination whether the application is in the public interest.

Because the issue of whether Johnson may lawfully discontinue effluent service pursuant to a filed tariff without prior Commission approval is in dispute in the above-captioned Complaint, until the matters raised by the Complaint have been resolved by the Commission it is in the public interest to: prohibit Johnson from disconnecting the delivery of water to Swing First; and require Johnson to either resume the delivery of effluent (at the historical volume received by Swing First) or continue to deliver non-effluent water as required by Swing First.

Until further order of the Commission, Swing First should continue to pay the rates set forth in the effluent rate tariff for all water delivered previously or delivered during the pendency of this proceeding. However, the temporary directives described above should not be construed as a

determination of the ultimate obligation of Swing First to pay the full tariff rate for non-effluent water; rather, it is an interim measure to maintain the status quo until the Commission has rendered a decision regarding the underlying issues raised in the Complaint.

IT IS THEREFORE ORDERED that until the matters raised by the Complaint have been resolved by the Commission, Johnson Utilities, L.L.C. shall be prohibited from disconnecting the delivery of water to Swing First, and Johnson Utilities, L.L.C. shall either resume the delivery of effluent (at the historical volume received by Swing First) or continue to deliver non-effluent water as required by Swing First. Until further order of the Commission, Swing First shall continue to pay the tariffed effluent rate for all water delivered previously or delivered during the pendency of this proceeding.

IT IS FURTHER ORDERED that until further order of the Commission, Swing First should continue to pay the rates set forth in the effluent rate tariff for all water delivered previously or delivered during the pendency of this proceeding.

IT IS FURTHER ORDERED that the temporary directives described herein shall not be construed as a determination of the ultimate obligation of Swing First to pay the full tariff rate for non-effluent water; rather, it is an interim measure to maintain the status quo until the Commission has rendered a decision regarding the underlying issues raised in the Complaint.

IT IS FURTHER ORDERED that withdrawal of representation must be made in compliance with A.A.C. R14-3-104(E) and Rule 1.16 of the Rules of Professional Conduct (under Arizona Supreme Court Rule 42). Representation before the Commission includes appearances at all hearings and procedural conferences, as well as all Open Meetings for which the matter is scheduled for discussion unless counsel has previously been granted permission to withdraw by the Administrative Law Judge or the Commission.

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1 IT IS FURTHER ORDERED that the Administrative Law Judge may rescind, alter, amend, or waive any portion of this Procedural Order either by subsequent Procedural Order or by ruling at 3 the hearing. DATED this /7<sup>th</sup> day of May, 2016. 4 5 Modes for 6 7 ADMINISTRATIVE LAW JUDGE 8 Copies of the foregoing mailed/delivered this 17th day of May, 2016 to: Jeffrey W. Crockett CROCKETT LAW GROUP PLLC 2198 E. Camelback Road, Suite 305 Phoenix, AZ 85016-4747 Attorney for Johnson Utilities, L.L.C. Thomas K. Irvine Kelly Flood ASU ALUMNI LAW GROUP Two North Central Avenue, Suite 1600 Phoenix, AZ 85004 Attorneys for Johnson Utilities, L.L.C. Craig A. Marks CRAIG A. MARKS, PLC 10645 North Tatum Blvd., Suite 200-676 Phoenix, Arizona 85028 Attorney for Swing First Golf, LLC Janice Alward, Chief Counsel Legal Division ARIZONA CORPORATION COMMISSION 1200 West Washington Street Phoenix, AZ 85007 Thomas Broderick, Director **Utilities Division** ARIZONA CORPORATION COMMISSION 1200 West Washington Street Phoenix, AZ 85007 By: Rebecca Tallman

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Assistant to Yvette B. Kinsey